INDEX

	Page
Complaint	2
Answer of States Marine Lines, Inc.	4
Answer of Union Barge Lines Corporation	7
Motion and Order dropping and adding parties defendant by Luckenbach Overseas Corporation	8
Answer of Luckenbach Overseas Corporation	10
Motion and Order dropping and adding parties defendant by Isthmian Lines, Inc.	13
Motion for Summary Judgment by Luckenbach Overseas Corporation and Isthmian Lines, Inc.	15
Affidavit of Wilbert Antoine	16
Summary of Material Facts Attached to Motion of Luckenbach Overseas Corporation and Isthmian Lines, Inc. for Summary Judgment	17
Deposition of Joseph C. Usner	20
Motion and Order Enrolling Additional Counsel by Petitioner	87
Motion for Summary Judgment by Union Barge Lines Corporation	88
Motion to Amend Complaint	88
Minute Entry, Granting Motion of Union Barge Line for Summary Judgment: Amending Complaint and Taking Motion of Luckenbach for Summary Judgment Under Advisement	89

INDEX (Continued)

	Page
Amended Complaint	91
Order Denying Motions of Luckenbach and Isthmian Lines for Summary Judgment	92
Motion for Rehearing or, in the Alternative, to Amend Order Denying Summary Judgment	92
Order Granting Motion of Luckenbach and Isthmian Lines for Amended Order of August 11, 1967	94
Order Amending Order of August 11, 1967	94
Motion to Add Co-Counsel by Luckenbach Overseas Corporation and Isthmian Lines, Inc.	95
Order Granting Interlocutory Appeal	96
Notice of Appeal of Luckenbach Overseas Corporation and Isthmian Lines, Inc.	97
Clerk's Certificate	98
Opinion of Fifth Circuit on Appeal	99
Mandate of Fifth Circuit	103

Petition for Certiorari filed September 30, 1969

Certiorari Granted February 27, 1970

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 675

JOSEPH CHARLES USNER,

Petitioner,

versus

LUCKENBACH OVERSEAS CORPORATION, ET AL,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

Petition for Certiorari filed September 30, 1969
Certiorari Granted February 27, 1970

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
JOSEPH CHARLES USNER

versus

LUCKENBACH STEAMSHIP COMPANY, INC.
STATE MARINE LINES, INC.
and UNION BARGE LINES CORP.
Civil Action Number 15531
Division B
(Filed: April 27, 1965)

COMPLAINT

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION:

The complaint of Joseph Charles Usner, a person of the full age of majority and a resident and citizen of the State of Louisiana, complains as follows:

1.

That the jurisdiction of this Honorable Court arises under Section 1333 of Title 28 of the United States Code concerning itself with Admiralty and Maritime Jurisdiction.

2.

Defendant, Luckenbach Steamship Company, Inc., is a foreign corporation organized and existing under the laws of the State of Delaware and has not appointed an agent for service of process in the State of Louisiana; defendant, States Marine Lines, Inc., is a foreign corporation with principal offices at 90 Braud Street, New York, New York, and is doing business in the State of Louisiana but has not filed the necessary papers with the Secretary of State of the State of Louisiana, appointing an agent for service of process within this state; defendant, Union Barge Lines Corporation, is a foreign corporation with principal offices at the Dravo Building, 5th and Liberty Street, Pittsburgh, Pennsylvania, and is doing business in the State of Louisiana but has not filed the necessary papers with the Secretary of State, State of Louisiana, appointing an agent for service of process within this state.

3.

On or about April 28, 1964, complainant was employed by T. Smith & Son, Inc., Stevedores, aboard the vessel U.B.L. NO. 417, a barge owned and operated by defendant, Union Barge Lines Corporation, which vessel was tied to the vessel, Edgar Luckenbach, a ship owned by defendant, Luckenbach Steamship Company, Inc., and chartered by defendant, States Marine Lines, Inc., and petitioner was injured because of the unseaworthiness of the barge U.B.L. No. 417 and the ship Edgar Luckenbach, and because of the negligence of the charterer, States Marine Lines Corporation, the ship owner, Luckenbach Steamship Company, Inc. and the employer Stevedoring company.

4.

As a result, petitioner was injured in the sum of $150,000.00, plus an additional sum of $5,000.00 for medical expenses.

WHEREFORE, complainant prays for judgment against the defendants, *in solido*, in the sum of $150,000.00 damages, plus $5,000.00 medical expenses, and all costs of these proceedings. Petitioner further prays for a trial by jury.

by Attorneys:

H. ALVA BRUMFIELD
JACK E. YELVERTON
509 St. Louis Street
Baton Rouge, Louisiana
By: /s/ Jack E. Yelverton

ANSWER

(Number and Title Omitted) (Filed: June 10, 1965)

TO THE HONORABLES, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION:

The answer of States Marine Lines, Inc., defendant, to the complaint of Joseph Charles Usner, with respect represents:

I

Defendant avers that the allegations of Article 1 of the complaint are conclusions of law which do not require answers; if, however, answers are required, said allegations are denied.

II

Insofar as the allegations of Article 2 of the complaint refer or relate to defendant, States Marine Lines, Inc., said allegations are denied except that defendant admits that it is a foreign corporation with offices at 90 Broad Street, New York, New York.

III

For lack of sufficient knowledge or information to justify belief, defendant denies the allegations contained in Article 3 of the complaint except that defendant admits that on or about April 28, 1964, the SS EDGAR F. LUCKENBACH was under charter to the defendant, States Marine Lines, Inc., and that defendant specifically

denies that the plaintiff was injured because of alleged unseaworthiness and/or negligence for which defendant is responsible or liable.

IV

The allegations of Article 4 of the complaint are denied.

V

Further answering the complaint, and as a separate and distinct defense, defendant avers that any injuries sustained by the plaintiff, which are denied, resulted from his own fault, carelessness, or inattention to duty, for which defendant is not liable, or from the fault, negligence, or breach of contractual obligations of others for whom the defendant is not responsible or liable, and were not due to or in any way contributed to or caused by the fault or negligence of the defendant or anyone for whose fault or negligence defendant is responsible or liable.

VI

Defendant further avers in the alternative that if the injuries which the plaintiff may have sustained, and which are denied, were caused or contributed to by its fault or negligence and/or by any unseaworthiness for which defendant is responsible or liable, all of which is denied, then, in that event, defendant avers that said injuries and their resulting consequences were contributed to by the fault and negligence and inattention to duty of the plaintiff, and your defendant specifically pleads contributory negligence on the part of the plaintiff in mitigation of his recovery, if any.

VII

Defendant avers that it has been and is continuing its investigation of the allegations set forth in the complaint, and defendant specifically reserves the right to file supplemental and amended answers and to assert claims through appropriate pleadings against one or more third parties and/or parties to this action, depending upon the facts as they may develop.

WHEREFORE, defendant prays that after due proceedings had there be judgment in its favor, dismissing the complaint with costs. Defendant further prays for all general and equitable relief.

TERRIBERRY, RAULT,
CARROLL, YANCEY &
FARRELL

By: /s/ M. D. Yager
Attorneys for Defendant
State Marine Lines, Inc.
825 Whitney Building
New Orleans, Louisiana 70130

ANSWER

(Number and Title Omitted) (Filed: June 17, 1965)

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION:

NOW COMES Union Barge Line Corporation, who for answer to the plaintiff's complaint, avers:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

For answer to the specific allegations of the plaintiff's complaint, Union Barge Lines Corporation avers:

1.

The allegations of paragraph 1 do not require an answer.

2.

The allegations of paragraph 2 are denied except that it is admitted that Union Barge Lines Corporation is a foreign corporation with its principal offices in Pittsburgh, Pennsylvania.

3.

The allegations of paragraph 3 are denied for lack of sufficient information to justify a belief.

4.

The allegations of paragraph 4 are denied for lack of sufficient information to justify a belief.

Third Defense

Any injuries sustained by the plaintiff as alleged were caused by his own negligence and in the alternative by his contributory negligence, which bars his recovery herein or mitigates his damages.

WHEREFORE, Union Barge Lines Corporation prays that this answer be deemed good and sufficient and the plaintiff's suit dismissed.

And for all general and equitable relief.

ADAMS AND REESE

By: /s/ George V. Baus
847 National Bank of Commerce Building, New Orleans, Louisiana
Attorneys for defendant, Union Barge Lines Corporation

MOTION AND ORDER DROPPING AND ADDING PARTIES DEFENDANT

(Number and Title Omitted) (Filed: July 13, 1965)

Now comes Luckenbach Overseas Corporation, through its undersigned counsel, and upon suggesting to the Court that, at all times pertinent hereto, it was, and still is,

the owner of the SS EDGAR F. LUCKENBACH, which vessel is referred to and alleged to be unseaworthy in the complaint of Joseph Charles Usner filed herein, and, accordingly, Luckenbach Overseas Corporation is a proper party defendant in the above-entitled cause; and

Upon further suggesting to the Court that it is in order for Luckenbach Steamship Company, Inc. to be dropped as party defendant in this action, with its name stricken from the summons and complaint and all other pleadings, and that the action continue without Luckenbach Steamship Company, Inc. to the same effect as if it had never been joined; and

Upon further suggesting to the Court that it is in order for Luckenbach Overseas Corporation to be added as a party defendant and the title to this action amended to list Luckenbach Overseas Corporation as a defendant;

IT IS ORDERED that Luckenbach Steamship Company, Inc. be and the same is hereby dropped as party defendant in this action, with its name stricken from the summons and complaint and all other pleadings, and that the action continue without Luckenbach Steamship Company, Inc. to the same effect as if it had never been joined; and

IT IS FURTHER ORDERED that Luckenbach Overseas Corporation be and the same is hereby added as a party defendant and the title to this action amended to list Luckenbach Overseas Corporation as a defendant herein.

New Orleans, Louisiana, July 15, 1965.

/s/ Robert A. Ainsworth, Jr.
UNITED STATES DISTRICT
JUDGE

TERRIBERRY, RAULT, CARROLL,
YANCEY & FARRELL

By: /s/ M. D. Yager
Attorneys for Luckenbach
Overseas Corporation

No Objection:

H. ALVA BRUMFIELD
JACK E. YELVERTON

By: /s/ Jack E. Yelverton
Attorneys for Joseph Charles
Usner

ANSWER

(Number and Title Omitted) (Filed: August 17, 1965)

TO THE HONORABLES, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION:

The answer of Luckenbach Overseas Corporation, defendant, to the complaint of Joseph Charles Usner, with respect represents:

I.

Defendant avers that the allegations of Article 1 of the complaint are conclusions of law which do not require answers; if, however, answers are required, said allegations are denied.

II.

Insofar as the allegations of Article 2 of the complaint may refer or relate to defendant, Luckenbach Overseas Corporation, said allegations are denied except that defendant admits that it is a foreign corporation and has not appointed an agent for service of process in the State of Louisiana.

III.

For lack of sufficient knowledge or information to justify belief, defendant denies the allegations contained in Article 3 of the complaint except that defendant admits that on or about April 28, 1964, defendant owned the SS EDGAR F. LUCKENBACH, and that defendant specifically denies that the plaintiff was injured because of alleged unseaworthiness and/or negligence for which defendant is responsible or liable.

IV.

The allegations of Article 4 of the complaint are denied.

V.

Further answering the complaint, and as a separate and distinct defense, defendant avers that any injuries sustained by the plaintiff, which are denied, resulted from his own fault, carelessness, or inattention to duty, for which defendant is not liable, or from the fault, negligence, or breach of contractual obligations of others for whom the defendant is not responsible or liable, and were not due to or in any way contributed to or caused by the fault or negligence of the defendant or anyone for whose fault or negligence defendant is responsible or liable.

VI.

Defendant further avers in the alternative that if the injuries which the plaintiff may have sustained, and which are denied, were caused or contributed to by its fault or negligence and/or by any unseaworthiness for which defendant is responsible or liable, all of which is denied, then, in that event, defendant avers that said injuries and their resulting consequences were contributed to by the fault and negligence and inattention to duty of the plaintiff, and your defendant specifically pleads contributory negligence on the part of the plaintiff in mitigation of his recovery, if any.

VII.

Defendant avers that is has been and is continuing its investigation of the allegations set forth in the complaint, and defendant specifically reserves the right to file supplemental and amended answers and to assert claims through appropriate pleadings against one or more third parties and/or parties to this action, depending upon the facts as they may develop.

WHEREFORE, defendant prays that after due proceedings had there be judgment in its favor, dismissing the complaint with costs. Defendant further prays for all general and equitable relief.

TERRIBERRY, RAULT,
CARROLL, YANCEY
& FARRELL

By: /s/ M. D. Yager
Attorneys for Defendant
Luckenbach Overseas Corporation
825 Whitney Building
New Orleans, Louisiana 70130

MOTION AND ORDER DROPPING AND ADDING PARTIES DEFENDANT

(Number and Title Omitted) (Filed: December 14, 1965)

Now comes Isthmian Lines, Inc., through its undersigned counsel, and upon suggesting to the Court that, at all times pertinent hereto, it was the charterer of the SS EDGAR F. LUCKENBACH, which vessel is referred to and alleged to be unseaworthy in the complaint of Joseph Charles Usner filed herein, and, accordingly, Isthmian Lines, Inc. is a proper party defendant in the above-entitled cause; and

Upon further suggesting to the Court that States Marine Lines, Inc., named defendant herein as charterer of the said vessel, was not in fact the charterer, and, accordingly, that it is in order for States Marine Lines, Inc. to be dropped as party defendant in this action, with its name stricken from the summons, complaint, answer, and all other pleadings, and that the action continue without States Marine Lines, Inc. to the same effect as if it had never been joined; and

Upon further suggesting to the Court that it is in order for Isthmian Lines, Inc. to be added as a party defendant, with its name substituted for that of States Marine Lines, Inc. in the summons, complaint, answer and all other pleadings, and that the action continue with the same force and effect as if Isthmian Lines, Inc. had been proceeded against in the place and stead of States Marine Lines, Inc.;

IT IS ORDERED that States Marine Lines, Inc. be and the same is hereby dropped as party defendant in this action, with its name stricken from the summons,

complaint, answer and all other pleadings, and that the action continue without States Marine Lines, Inc. to the same effect as if it had never been joined; and

IT IS FURTHER ORDERED that Isthmian Lines, Inc. be and the same is hereby added as a party defendant, with its name substituted for that of State Marine Lines, Inc. on the summons, complaint, answer and all other pleadings, and that the action continue with the same force and effect as if Isthmian Lines, Inc. had been proceeded against in the place and stead of States Marine Lines, Inc.

New Orleans, Louisiana, December 15, 1965.

/s/ Hebert Christenberry
UNITED STATES DISTRICT JUDGE

TERRIBERRY, RAULT, CARROLL,
YANCEY & FARRELL

By: /s/ M. D. Yager
Attorneys for Isthmian Lines, Inc. and
for States Marine Lines, Inc.
Whitney Bk. Bldg., New Orleans, La., 525-0641

NO OBJECTION:

H. ALVA BRUMFIELD
JACK E. YELVERTON

By: /s/ Jack E. Yelverton
Attorneys for Joseph Charles Usner
509 St. Louis St., Baton Rouge, La., 343-0618

MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted) (Filed: July 19, 1967)

Now comes Luckenbach Overseas Corporation and Isthmian Lines, Inc., defendants, and upon suggesting to the Court that on the basis of the transcript of the deposition of plaintiff Joseph Charles Usner, the affidavit of Wilbert Antoine, and the summary of material facts, attached hereto and made a part hereof, there are no genuine issues as to any material facts which will render defendants liable herein;

Wherefore, defendants move for summary judgment in their favor, dismissing the complaint as against them, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

TERRIBERRY, RAULT,
CARROLL, YANCEY
& FARRELL

By: /s/ M. D. Yager
Attorneys for Luckenbach Overseas Corporation and Isthmian Lines, Inc.
2141 International Trade Mart Bldg.
2 Canal Street
New Orleans, Louisiana 70130

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 15,531
DIVISION "B"

JOSEPH CHARLES USNER

versus

LUCKENBACK STEAMSHIP COMPANY, INC., STATE MARINE LINES, INC., and UNION BARGE LINES CORP.

AFFIDAVIT OF WILBERT ANTOINE ATTACHED TO MOTION OF LUCKENBACH OVERSEAS CORP. and ISTHMIAN LINES, INC., FOR SUMMARY JUDGMENT

(Filed: July 19, 1967)

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, a Notary Public in and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared:

WILBERT ANTOINE

who being by me first duly sworn, did depose and say:

He is 44 years old and has worked as a longshoreman in the Port of New Orleans since 1941; he works basically as a hold man but that he had worked at least 150 days as a break-out winch operator and at least 50 days as a regular winch operator prior to April 28, 1964; that he operated the break-out winch aboard the SS EDGAR LUCKENBACK on April 28, 1964; that the break-out winch was being used to assist in the discharge of cargo from a barge moored alongside that ship.

He experienced no difficulty whatsoever with the ship's winch at any time that day and that the winch and all the ship's equipment functioned properly throughout the break-out operations.

(s) Wilbert Antoine
Wilbert Antoine

Sworn to and subscribed
before me, this 24th day
of August, 1965.
(s) Albert H. Hanemann, Jr.
Notary Public

SUMMARY OF MATERIAL FACTS PURSUANT TO LOCAL RULES OF COURT, ATTACHED TO MOTION OF LUCKENBACH OVERSEAS CORP. and ISTHMIAN LINES, INC., FOR SUMMARY JUDGMENT

(Filed: July 19, 1967)

Now come defendants Luckenbach Overseas Corporation and Isthmian Lines, Inc., and in support of their motion for summary judgment, and for that purpose

only, submit the following statement of material facts as to which defendants contend there is no genuine issue to be tried, said statement being submitted pursuant to the Local Rules of Court:

On April 28, 1964, the SS EDGAR F. LUCKENBACH, owned by defendant Luckenbach Overseas Corporation and under charter to defendant Isthmian Lines, Inc., lay moored to a dock in the Port of New Orleans, Louisiana, loading a cargo of steel products from one or more barges alongside. The loading operations were being conducted by stevedore T. Smith & Son, Inc., and among those stevedore employees participating in the work was longshoreman Joseph Charles Isner, the plaintiff herein.

During the forenoon and up until the accident allegedly occurred at about 2:30 p.m., April 28, plaintiff worked aboard a barge which was made fast alongside the ship, approximately abreast of hatch No. 3. The after offshore boom and winch at the ship's No. 2 hatch were operated by and under the direction of other stevedore employees to "break out" the cargo of lengths of steel on the barge, following which the cargo gear at hatch No. 3 was used to bring the steel on board. On the barge plaintiff worked with the "break out" gear, receiving and handling the "break out" hook and slings which were used to raise individual drafts of cargo temporarily to facilitate their being readied for loading onto the vessel.

Up until the time of the accident, the cargo activities, and particularly the use and operation of the "break out" gear, proceeded in the customary and normal manner, and there were no complaints about the working conditions which prevailed. The stowage of the steel cargo aboard the barge was proper, and the "break out" hook

had been lowered to and handled by the plaintiff without difficulty.

On the occasion of the accident, however, the "break out" gear was not lowered to within the plaintiff's reach as it had been before, but the hook and slings were stopped while still several feet above him, in which position he could not reach them. The stevedore derricksman (or signal man) on the ship directing the "break out" winch operator told the plaintiff that the gear would be lowered and placed in his, the plaintiff's, hands; but suddenly and unexpectedly, the hook and slings were lowered rapidly and over a greater distance than had been anticipated, striking the plaintiff and carrying him off balance, as a result of which he fell.

All of the EDGAR F. LUCKENBACH'S gear and equipment, including the "break out" winch and gear, functioned properly at all times. The ship's personnel aboard the EDGAR F. LUCKENBACH at the time of the accident did not participate in or supervise the cargo operations and did not use, manage or direct the "break out" winch and gear.

TERRIBERRY, RAULT, CARROLL, YANCEY & FARRELL

BY: (s) M. D. Yager
Attorneys for Luckenbach Overseas Corporation and Isthmian Lines, Inc.
2141 International Trade Mart Bldg.
2 Canal Street
New Orleans, Louisiana 70130

DEPOSITION OF JOSEPH C. USNER

(Number and Title Omitted) (Filed: July 19, 1967)

Deposition of JOSEPH C. USNER taken before Leonard J. Bossier, Jr., Notary Public in and for the Parish of Orleans, State of Louisiana, in the offices of Adams & Reese, 847 National Bank of Commerce Building, New Orleans, Louisiana, on the 11th day of August, 1965.

APPEARANCES:

LAW OFFICES OF:
H. ALVA BRUMFIELD
(BY: JACK E. YELVERTON, ESQ.)
For the Plaintiff

ADAMS & REESE
(BY: GEORGE V. BAUS, ESQ.)
For the Defendant, Union
Barge Line Corporation

TERRIBERRY, RAULT, CARROLL,
YANCEY & FARRELL
(By: M. D. YAGER, ESQ.)
For the Defendant, States
Marine Lines, Inc., and
Luckenbach Overseas Corp.

LEMLE & KELLEHER
(BY: THOMAS W. THORNE, JR., ESQ.)
For T. Smith & Son,

REPORTED BY:
Leonard J. Bossier, Jr.,
Official Court Reporter.

STIPULATION

It is stipulated and agreed by and between all parties that the deposition of JOSEPH C. USNER is hereby being taken pursuant to the Federal Rules of Civil Procedure, for purposes of discovery. All formalities including those of signing, sealing, certification and filing are waived; all objections except those as to the form of the questions are reserved until the time of the trial of the cause.

JOSEPH C. USNER, 21 Ren Pass Avenue, Harahan, Louisiana, a witness named in the above stipulation, being first duly sworn in the cause, testified on his oath as follows:

BY MR. BAUS:

Q State your name, please.

A Joseph C. Usner.

Q Mr. Usner, where do you presently reside?

A 21 Ren Pass, Harahan.

Q And how old are you, sir?

A Forty-five.

Q And are you married?

A Yes.

Q And you live with your wife?

A That's right.

Q And do you have any children?

A Three.

Q Do you own your own home?

A Well, it's not paid for.

Q It's a mortgage against it?

A It's a mortgage.

Q What is your present occupation, Mr. Usner?

A Longshoreman.

Q On April 28, 1964 you were also a longshoreman?

A Yes, sir.

Q How long have you been a longshoreman?

A I think going on eighteen years.

Q And for what stevedore are you presently employed or by what stevedore?

A T. Smith & Son.

Q How long have you been employed by T. Smith & Son?

A The whole time.

Q Eighteen years?

A Eighteen years.

Q Have you been employed by any other stevedores?

A Caught maybe one or two jobs, I believe one with Lykes Bros. and one with Army Base. I worked one day at the Army Base.

Q Mr. Usner, you filed a suit claiming damages for personal injuries sustained by you on April 28, 1964 while you were employed by T. Smith & Son. Would you tell me generally what happened that day and on what vessel you were on and just generally all of the facts.

A I don't have no notes with me exactly now. I think it was with Luckenbach, was working a barge of steel at number three hatch and was using a breakout hook at number two hatch.

Q Excuse me. When you say you were working a barge with steel do you mean you were unloading?

A Unloading the barge into the ship.

Q What time of day had you gone to work?

A 8:00 o'clock.

Q And what time of day did this accident happen?

A Around 2:30 in the evening.

Q And you state that the accident occurred while loading the steel into number three hatch?

A Yes, was using a breakout hook, I was running the

breakout hook most of the time, there was four men down there hook it up and it was low, so then nobody was working the number two hatch and he swung that boom on the end on that steel so we could hold it up and run the wires on each end and make faster time.

Q Well, let me ask you this: At the time you were injured you were aboard the barge?

A The barge. I was running the breakout hook.

Q What is the breakout hook?

A In other words, the end of the steel is here, now, you had about seven or eight feet from the end of the steel to the edge of the barge where it goes up. Well, every tier of steel you take out you got 4 x 4's, leave a space so you can get your wire in and take the whole tier out and—

Q What type of steel was it, scrap or plate steel?

A No, it was about forty or fifty foot long, it was different type bundles, take so many bundles with the breakout hook and hold it up and go into the hatch because they had to give it a little dip to get down there in the hatch, they had two forklifts, they run it on so many loads on this side and so many on the other side to balance the ship up.

Q You were on the barge using the breakout hooks. Now, specifically what do the breakout hooks do?

A In other words, they take number two boom and

swing it around to the edge of that, just like the edge of this steel, and that's staying on the end of that steel in the middle where the hook would come down and they had a wire and I'd slide it under about four feet and I'd give a signal or the derrickman, they had a derrickman up there, he'd pick it up and hold it up, you see, we'd get out the way and hold it up so that end on the other end would be high enough because some of them was laying flat and couldn't get under there and have to wait and take too much time loading the ship, so to speed the work up we use the breakout hook and put an extra set of wires on that, so when he come out with the two empty wires and put the two new wires, while he was going in we was breaking out another load.

Q You were using the—what is it, the crane or derrick?

A No. using the ship gear, ship boom.

Q You were using the boom for the number two hatch?

A To break this out, call the breakout hook, that would be out the way by hanging on the end enough to hold it up.

Q And the breakout hook simply is to raise the steel up in order to get the other two wires?

A Yes, and then we let it down, we'd be ready, we'd be waiting for them to come out, we have the wire all hooked up, just to put it on the hook and go right on in and that would speed the work up instead of waiting for them to let us come out with the wires and then hook a load

up, fish it around and all that and lose a lot of time, was losing too much time in the morning, so we decided to use a breakout hook.

Q The steel would then be picked up by the boom on the number three hatch?

A Yes, two booms, two booms was picking it up.

Q Now, what happened to you?

A I was standing on this edge around—

Q Standing on what?

A On the edge of this iron up on top so I can catch my breakout hook. So when he come around 2:30, he stopped about four feet from me, so he said, "Joe," he said, "Wait a minute," he said, "I'm going to put it right in your hands." It stopped up there for I'd say almost a minute, so when he came down it came down all at one time, so I grabbed what I could, the wire, because the chain was wrapped around my neck, and from the weight being not over the steel but right on the edge, had a tendency to swing back and I went backward like this (indicating) and I landed in that whole pile of lumber like this (indicating). This leg was jammed in the iron, this one was caught and I was in here by the 4 bys on the side of my hip.

So then the foreman hollered tell the fellows to get that chain off of me. They said I had that chain and two cables that must have weighed seventy-five pounds but it never hurt my neck

or anything like that, I got up, I pulled my pants down, I didn't see I was cut anywhere but it was hurting, so we worked the rest of the evening and that night when I went home I couldn't sleep. That leg just pained me something awful and I come in the next day to work.

Q When you refer to this chain and this line—

A Well, that's the fall, in other words, from the boom, you got two wires about that thick and on there is attached the chain about five foot long with a hook about that thick around, it's a cargo hook.

Q Now, again, this wasn't a breakout?

A The breakout hook, they call the breakout hook, at that number two hatch it's a separate boom in other words, separate one and that's what comes down. You see, you only had a winch running and a derrickman.

Q You only had what?

A A winch runner and a derrickman because the winch runner couldn't see anything. He was up behind the boom, No. 2 hatch, so they had a man on deck standing looking down in the barge and he flagged the man either up or down, the winch runner could bring that hook up or down.

Q Why was that?

A Chester Weatheroy, he was the hold man, he was just the man they took out the hold, and extra man to put up there. He's not a regular derrickman,

either the winch runner he had up there, he was a regular hold man but they use him now and then to run a winch when they do something like that.

Q Do you know who was operating the winch?

A Yes, Antoine, I know him as Antoine.

Q Who are Weatheroy and Antoine?

A They work in the hold like I do.

Q They're employed by—

A T. Smith

Q Do you know what made the line come down too fast?

A I don't know. All I know it was coming down and I was grabbing what I could grab because I sure didn't want it to hit me in the head.

Q Was it free-falling or what?

A Just like I told you, it was stopped, the bottom of the hook was high as this ceiling here and then a man be over here on the deck side, wait a minute, hold everything, I'm going to give it to you, I'm going to put it in your hands. It would come down slow and I could take the wires off, you see, so this time he said wait a minute, and I wait, and when it come down I couldn't watch him, I was watching the hook. Now, if the signal he give and the winch runner took it for something else, but he come down fast, all I know it come down, when it did, when I seen it I swung around

and tried to grab as much as I could because I knew I was on top, I was about five or six foot high on that iron and the 4 bys was on the floor which made a fall of about a good four and a half feet.

Q You say you fell on these 4 x 4's?

A It dragged me off the top, from the weight of the two falls and the chain and the hook. You see, that's what laid over my shoulder and not being exactly over the steel, more this way, you see, because I had to pull it a little bit to get it, so I went back with all the weight.

Q Now, where did these 4 x 4's come from?

A Underneath the steel, they were sleepers, what they call sleepers, in other words, when they start the bottom of the barge they laid 4 x 4's all over the bottom, six or eight foot apart and then they put as much steel going from one side of the barge to the other and when they come up again with another tier they put more 4 bys until they get to the top.

Q Now, the ones that you had fallen on, had they been removed by you all and thrown over on the side?

A The four of us were throwing them, getting them out of the way. If we let them on top, they had a tendency when they pick up the steel, they'd be falling all over your head and everything else, they had to be put out of the way.

Q And those that you fell on had been put out of the way?

A Oh, yes, we had all went to that one end, that's the only hold we had to throw them in. There's a space from this table to the other side, about six or eight feet that it was all the way down to the floor with nothing.

Q When you say you threw them in a hold—

A Well, that's what they call the floor, throw them down on the floor.

Q Just the floor?

A Yes.

Q The top deck of the barge?

A Yes, when you're on steel, longshoremen talk, throw it down in the hold, that's the hold.

Q Now, let me ask you this: Did any condition of the barge make you fall?

A Well, I was working pretty dangerous as it was, I had to be careful, I was on the end of that steel to grab that hook and you don't put that hook anywheres, say six foot on top the steel because when they picked up it would be all tangled up, so in order to do that I had to catch that hook every time and take the wire off and hook it around the steel and tell everybody to get out of the way and let the derrickman hold it up.

Q Let me ask you this: Was the steel loaded properly on the barge as you were taking it off?

A Yes.

Q There wasn't anything wrong with the way it was loaded on the barge?

A No, it was the idea of the cable coming down and just pulled me off, you see, that's what happened, I couldn't hold that thing, it come down all at one time. Now, I couldn't see the derrickman give the wrong signal, the right signal or what, all I know it was coming down and I was grabbing and when I seen it it was too late, something comes down all at one time.

Q I see. And who were the names of the other people that were working on the barge with you?

A There was Isidore Mills, Max Turner and Phillip Flitters.

Q And all of those people were employed by T. Smith & Son?

A Yes.

Q Now, the barge was just tied up to the ship?

A Right.

MR. BAUS:

That's All I have.

BY M. YAGER:

Q Mr. Usner, you said you came to work at 8:00 o'clock that morning?

A Yes.

Q Was that the first day that you worked handling cargo on that ship or had you worked there the day before?

A Yes, I think it was the first day.

Q Now, do you remember where the ship was docked?

A By the cotton warehouse, that's from Napoleon Avenue on up they call it cottom warehouse.

Q And she was docked I suppose with her bow upstream, starboard side to the dock?

A Yes.

Q So that the barge would have been along the port side of the ship?

A Was on the outside of the ship.

Q Now, where did you first start to work when you went to work that morning?

A Down in the barge.

Q Down in the barge?

A In that barge, we started that barge.

Q Was the barge already there when you came to work?

A Yes, was tied up.

Q Could you tell whether or not the barge had a full load of cargo or had some cargo been discharged previously?

A Well, some barges—that particular barge now I couldn't swear to it but I think it was about half loaded.

Q Was there any indication from these 4 x 4's or anything else that part of this cargo had already been discharged, do you know?

A Well, I couldn't tell. Sometimes you might get a hundred pieces of steel in one barge and another time it might be all the way up to the very top.

Q Was this a flat deck barge?

A It was an open barge. I don't know what you mean by flat deck.

Q Solid flat deck with covers on it?

A No, this was an open barge, in other words, they don't cover a barge of steel, very seldom because the rain don't hurt it.

Q The deck of the barge was flat just like this table?

A And around the edges, about two foot wide.

Q Oh, I see, then it had a hold?

A And then it goes down.

Q I see, and you were working down inside this—

A Down inside.

Q How far below would you say the level of the deck

is where you were working on the barge at the time of your accident?

A The barge, I'd say it must have been a foot below my head.

Q Could the derrickman on the shop see your entire body—

A Yes.

Q — or could he just see a portion?

A No, I was standing up, I was a sore thumb up there.

Q Now, when were these booms both at number three and number two hatch rigged when you went to work that morning?

A Number three hatch, they rigged them when they went to work.

Q The T. Smith longshoremen rigged them, did they?

A Well, I couldn't swear to that because when they holler go to work we got to get ready to go down in the barge and get our equipment and stuff and throw wires, I mean, your back is turned.

Q Now, number three, which boom was it that was out over the barge or was out being used for breakout purposes?

A Number two hatch.

Q I'm sorry, number two hatch, was it the forward or aft boom?

A Aft boom.

Q On the offshore side, of course?

A Yes.

Q Now, was only one fall being used from that boom?

A Yes, one fall, just to hold it up and come back down.

Q This barge was alongside the ship abreast of hatch number three, even with hatch number three?

A Yes.

Q Is that right?

A Well, the very end of it must have been up toward number two hatch, that's the way they spot them where they can work.

Q Where you had your accident, where were you standing with respect to the ship, would you have been even with the forward end of the number three or middle of the number three?

A I would be more to the forward end.

Q You continued working up until the time of your accident?

A I complained to the fellow, you know, it was kind of hurting me, burning me, you know, we worked all the way until 5:00 o'clock.

Q Up until the time of your accident you worked from

8:00 o'clock until about 2:30 doing this same kind of work breaking out?

A Yes.

Q Was the work done in the same way all that morning and that afternoon until your accident, is that right?

A That's right. Now, they had one or two of the other men made a few loads on the breakout hook besides me. I didn't continue to breakout from 8:00 o'clock all the way until the time but I done I'd say three-quarters of it.

Q Now, was the position of the breakout boom, we'll call it the boom at hatch number two, was that changed at any time while you were working that day or was it's position changed?

A No.

Q Now, were you considered part of the gang of longshoremen working at hatch number three?

A Oh, yes. I worked for that man for twelve years.

Q Who was your foreman?

A Bill Krummel.

Q You know how he spells his last name?

A K-r-u-m-m-e-l.

Q Now, were the men that was the winch runner and

the derrickman for hatch number two, were they also part of Bill Krummel's gang?

A They were but they were not regular, regular winch runner or a regular derrickman.

Q I understand that but they were part of his gang?

A Right.

Q He was their boss?

A Yes, but now Antoine is the regular hold man but Chester Weatheroy is what they call a regular extra man, he don't work all the time.

Q There was no separate gang worked at hatch number two as I understand it?

A No, nobody at all.

Q Now, did these same men at hatch number two, the derrickman and the winch operator work there all that day or do you know, up until the time of the accident?

A Yes, I think worked all the way until the time to go home.

Q Now, your accident happened during the daytime, didn't it?

A In the afternoon.

Q So there was no question about you had plenty of light to see during the course of your work?

A That's right.

Q Do you remember whether or not the barge was on an even keel, was it level or was she down by the head or one end or the other listing to one side or the other?

A Not to my knowledge. I just had to be careful and watch for ships to pass because if a ship passed then she wouldn't—

Q She would rock?

A Well, sure, after the ship passed she would get a wake in there but at the time that happened now it was just on an even keel.

Q And the barge was steady?

A The barge was steady.

Q Now, did you or any of the men working on the barge have any complaints about the working conditions, make any complaint to your foreman or to anyone else about working conditions up until the time of your accident? Did you all complain to anybody, did you say something should be done definitely?

A No, he does a lot of hollering.

Q Who's that?

A My boss, William Krummel, hurry up, get a load, get a load, get that damn breakout hook, let's go, they are trying to make time.

Q But as far as you know nobody on the barge had any complaints about the working conditions existing—

A No.

Q — or about the equipment or the gear being used?

A That's right.

Q Is that right?

A That's right.

Q Now, up until the time of your accident did you have any trouble or any difficulty using this breakout winch? In other words, did anything happen that happened at the time of your accident?

A You mean come down fast?

Q Come down fast.

A No, that's the one time it happened and that was it.

Q Now, what about after the accident, did it ever do it, occur again?

A No.

Q After you got up and you continued working as I understand—

A I continued working.

Q Even though you were in some pain?

A Yes, I had some pain but I seen I wasn't cut open or anything like that.

Q Now, did you continue to do this breakout work, same work you did at the time of your accident?

A Well, no, I didn't—I might have made one or two loads but I believe one of the other fellows took over after.

Q Did you see the breakout winch in operation, the hook or the runners, you know, and the chain that you described, did you see that being used though after your accident?

A The same fall being used after?

Q Yes.

A Yes.

Q Did it operate as it had before the accident the same way?

A I didn't notice. I was stooping down and running the wires through after that.

Q Did you see or hear anything unusual occur after your accident—

A No.

Q In the operation of this breakout winch —

A No.

Q — or boom —

A No.

Q — runners?

A No.

Q Now, did the derrickman of hatch number two say anything to you or to any of the men on the barge after the accident?

A No. Mr. Krummel was up there.

Q At the time of your accident?

A Yes. I heard him holler get the chain off the man. It was still on my shoulder like that when I was laying down in there, it was still across me and I couldn't get up with that thing on top of me and the two falls.

Q Did you ever talk to the winch operator or the derrickman at number two after your accident about what happened?

A No.

Q Was the discharge of this barge and the loading of hatch number three interrupted or delayed for any reason that day except for your accident, the few minutes for your accident?

A That's all.

Q That's all?

A That's all.

Q How long would you say the loading operation from the barge to the ship was interrupted by your accident?

A Maybe about five minutes, enough to get me out of there.

Q And then it just picked up again and continued, is that right?

A Continued again.

Q Now, I think you previously testified that you didn't see what the derrickman was doing when this hook came down suddenly, you didn't see what signals he was giving?

A I couldn't keep my eye on him all the time. I had to watch that and I had to balance myself standing on the end. You can glance and throw your eyes up to him every now and then when it's coming down but when I looked up he told me "Wait a minute, I'm going to put it in your hands." Well now, I looked at him like that and I watched the hook and when it come down that was it, there was no—I couldn't have jumped overboard and got out the way.

Q Did the derrickman or anyone on the barge shout any warning to you or do you remember?

A No, they didn't have time to do anything.

Q How far next to this, you said you were standing near the edge?

A Near the edge of the steel, I had to stand on it to reach the hook. In other words, I was on the end of the steel sticking maybe about the length of my shoe in front of me like this and that hook would come about right here, so when he stopped a little higher than the ceiling I was just like this waiting to catch it because I had to grab it and it slow down and come down slow a little further and I could reach it, it's three-quarter inch wire double up with the eyes and they're kind of hard to get off the hook and you had to raise with it and take them off. He had that hook up there, he said, "I'm going to put it in your hands," and when one turns the break loose, just like hitting the brakes on your car and you ain't got no brakes on the car, just that fast, so all I could do was grab what I could grab and with the weight of that and everything I went down in that pile of lumber.

Q What was the reason, if any, for your standing there, why couldn't you have stepped back and waited for the hook to come down and then stepped forward and take a hold of it?

A That's the way we worked all day. In other words, the hook would come right here where I was standing, so you're working all morning and you come back in the afternoon and the hook is going in your hand all morning long, you know, part of the afternoon, and the one time it just stopped dead about three or four feet up in the air from you reaching it, so he says, "Just a minute, I'm going to put it right in your hands," I'm watching that hook come down, when it does come down it shoots all the way down, ain't nothing you can do.

Q Before that your hook came down into your hands on every occasion?

A Oh, yes, perfect.

Q Did at any time it stop out of your reach?

A No, might have been a little too low, he'd get up just a little bit because if you have to get on your tip toes to take up two wires it's kind of rough, so they tried to put it about this height because that's weight on there, they're empty wires but they wires, still four wires on the one hook.

Q Now, was it necessary for you in handling this breakout hook and wires to stand right next to the edge of this cargo, is that right?

A Yes, had to stand in the center wherever the hook fell, when they put the boom around they spotted for the center of the barge and that's where you get.

Q And what happened to be right at the edge of the cargo as you were working it?

A Yes, had to be. If it would have been a foot out or two foot out I'd have to be reaching and then I would have fallen, maybe I would have went down there trying to reach for it but it had to be where you could get it.

Q How about the other direction?

A No, be in the way, it would be in the way, and the boom can come around so far, you see, those

booms don't go completely around, they fast forward and they come so far, but they had the barge spotted where they could break that steel out on that end and if anybody would have been working number two we wouldn't have been able to use it.

Q Now, have you done any kind of work before your accident for two or three years prior to your accident, did you do any kind of work other than longshoring?

A No.

Q Did you have any source of income other than money you earned on the waterfront?

A No, just on the waterfront.

Q That's your only income?

A Yes.

Q And you received injuries to what part of your body as a result of this accident?

A This left hip.

Q Anything else?

A And my right leg.

Q Anything else?

A No. I had an accident a few weeks before that with my wrist.

Q That's your right wrist?

A My right wrist, pulling on some cotton and the bale slipped and the hook went down and I popped something up in here and they sent me to the doctor. It swelled up.

Q Were you still being treated for this right wrist when you had this accident, the one we're talking about today?

A No, I was sent back to work to try it and it had swelled up.

Q How long had you been back to work from this right wrist injury when you had this—

A I wouldn't know if it was a week or a couple of days I mean, I'm going back a year, almost a year and a half.

Q Has your attorney sent you to see any doctors?

A Well, I went to doctors.

Q What doctors have you seen?

A Dr. Brown.

Q Where is he?

A On Prytania Street.

Q Any others?

A Dr. Llewellyn on Tulane Avenue and Dr. J. T. Nix.

Q Nix?

A Nix on Carrollton Avenue. He treated that right leg before.

Q Now, how long were you laid up with these injuries?

A Since April 28th, 1964.

Q To the present time?

A Yes.

Q You hadn't gone back to work?

A No, they wouldn't hire me. The doctor that operated on me told me my discharge was at Smith. They wouldn't give me none. Same way on Union, Roy, Houston & Faust, and they sent me to Dr. Berkett and then they sent me to Alldredge. Dr. Berkett told me to take a few weeks vacation when he examined me.

Q You had an operation you say?

A Yes.

Q What operation did you have?

A Touro.

Q What part of your body?

A Up in this hip.

Q Do you know what it involved?

A No, he wouldn't tell me. He said I'll put you in the hospital and give you a little treatment and he said

in three days you'll be back home, he said ain't nothing to it, we'll make a cut about three inches, and I was in there sixteen or seventeen days and I'm not cut about three inches, I'm cut about a foot.

Q When was this you were in the hospital?

A He never did discharge me either, he told me my discharge was at Smith. When I went to see Smith I could hardly walk. They just dropped all the therapy and all was giving me and Mr. Sidney Belsom was sitting like you behind the desk and they kept telling me to come out, they was going to put me to work and I had to see Mr. Thome, the superintendent for Smith, and his mother died, so he went to New York for a week and when he come back he asked me if I had a lawyer, he said there's a company policy, he said — let me see how he said that, "I hope you don't hold a grudge," and that was it, I ain't been back since.

MR. THORN:

I have to object to this response as not being responsive to the question.

BY MR YAGER:

Q When was it that you were operated upon, the month and year, do you remember?

A I'll have to look that up, I think it was August.

MR. THORNE:

Right, August of last year, the date was August 11th.

A I needed to bring me some notes.

BY MR. YAGER:

Q When is the last time you have seen let's say the T. Smith doctors or the doctors to whom you were sent by T. Smith?

A December 23rd.

Q Of last year, of course?

A Yes. He wished me luck too, no discharge.

Q You say you were never discharged by these doctors?

A Well, he said mine was at the company but he never would give me none. I'm supposed to have one to go back to work to give to the foreman and he harped on it that he wanted one and he sent me to see Mr. Sidney Belsom and he told me if they had time to write up the slip that day, they was working, to call him. Well, he never did call and the next morning I come to work, I was out a whole month waiting for him and then when he told me to see Mr. Thome and Mr. Thome's mother died, that was another week, he had to go to New York, and that's when he called me in the office and told me, "Do you have an attorney." I said, "Yes." He said, "That's the company policy," he sa[illegible], "I hope you don't hold no grudge," and he walked off.

MR. THORNE:

Same objection.

BY MR. YAGER:

Q When did you first ask to go back to work or be put back to work, do you remember when that was?

A Well, when Dr. Alldredge told me my discharge had been on the 23rd, I couldn't walk hardly and I went to see Mr. Belsom that day, I said, "Sidney, this doctor must be crazy, I can't hardly walk, I'm getting all kinds of charley horses in my leg and everything else." He said, "You're just a hypochrondriac." He was sitting in my car and I said, "You get the hell out," and I went home.

MR. THORNE:

Same objection.

BY MR. YAGER:

Q Do you remember when it was you were asked to go back to work or permitted, April or May of this year?

A Yes, I went to hire up when Mr. Thome told me that.

Q Now, have you made any other efforts to get employment anywhere either on the waterfront or elsewhere since your accident?

A Oh, I was with Mr. Krummel for twelve years. Why should I go with anybody else. I worked all day, if I would have went with anybody else I don't know if they would even hire me.

Q Your answer is no, you didn't try to get any other

employment since your accident except with T. Smith?

A That's right.

Q How long did you receive compensation?

A To the 12th of December.

Q Did you receive during that time any other payments from any insurance or State agency or Federal Government or any agency?

A No.

Q That was the only money you received?

A That's it.

Q Now, since that time what if any monies have you received?

A Any money?

Q Right, from insurance companies or from Federal or State Government Agencies?

A No, I don't have anything like that. I've been drawing in the last six or seven weeks this unemployment compensation, $40.00 a week.

Q For the last seven weeks?

A I get seven weeks now, draw $40.00 a week, I mean ain't been paying me nothing since Christmas.

Q How have you been getting along from the standpoint of —

A Pretty rough. Well, my brothers and sisters, they give me a few dollars, I go over there and eat because I got three kids, I got kids going to start school too.

Q Does your wife work?

A No. I have one of them in the hospital twice with appendix attack and never took them out yet, my oldest boy.

Q Now, you mentioned this wrist injury that you had had a couple — I have forgotten, I think you said a couple of weeks before this accident.

A Yes, they told me to wear a wrist band.

Q Had you had any accident or injuries involving your hip or any portion of your body before this.

A No.

Q You were a regular worker for T. Smith but you worked as often as work was available?

A Right, I mean, all the time, never was late. I think I got twelve years with the same foreman, the last twelve years, William Krummel.

Q Had you handled cargo from barges to ships under circumstances similar to the ones we have been talking about today on previous occasions?

A Yes.

Q Had you ever used a breakout winch before?

A Yes.

Q Was it rigged about like the one that was rigged on the Edgar Luckenbach?

A Yes, I'd say about the same.

Q Had you ever worked before when these men that you have named that were acting as derrickmen or winch operator?

A No, winch runner be up there a few times but not the derrickman.

Q This is his first time as derrickman as far as you know?

A No, he was off and on, different types of work, you know, and used derricks and all, used to get up there and run a winch but very seldom.

Q You've seen a lot of derrickmen in your years on the waterfront, haven't you?

A Yes.

Q How would you classify this derrickman in hatch number two whose name was — what was his name, Weatheroy?

A They're subject to make mistakes the same way as the winch runner himself because he's not a regular winch runner, that is, doing it every day, he might get up there one time and then six months later he might never get back up there for six more months and might go a year and then might go

twice in a week, but they're a regular hold man like I am now down in the hold. He used them in a jam. In other words, they couldn't run, hire up with another foreman and just completely get up there and run a winch all day long because they don't have enough experience but they do take a single fall and punch a lever forward and backwards. Like I say, they're subject to make mistakes.

Q The people on the barge —

A Because the two men working every day together, they would know the signals where you get a man that works once every six months and two different men might take a signal, different signal from a regular derrickman and might mean something else.

Q Let me ask you this: We never named the barge. Do you know what the barge was named or number was?

A No, offhand I wouldn't know that barge number.

Q But it was at hatch number three I think you said?

A Number three hatch.

Q That would be what, forward of the amid ship house?

A Forward of the ship, and that barge number would be way down on the side. In other words, the superintendent or somebody, the company would get that number even if they had a barge name, he'll know the number and he would give it to them but as far as the longshoremen knowing that number it

would have to be on black and white that big for you to see it.

Q Now, the people that were working on the barge were all T. Smith employees, were they?

A All T. Smith regular employees.

Q Did you see any of these ship's officers or crew members doing any of this cargo handling work?

A No.

Q As far as you know the ship's officers and crew members did not handle the winch or give signals to the winch runners or anything?

A No.

Q Did you ever hear of any complaint or make any complaint yourself about the condition of the ship's winches?

A On that particular boat?

Q Yes.

A No, not on that particular boat.

Q Do you have any reason to believe there was anything defective or out of the ordinary about the winches being used in number three or number two?

A Well, I'm down in the barge, his foot could have slipped off the brake, it could have happened anyway, you know, a number of ways, it could have happened

somewhere between that winch runner and the derrickman that give that signal.

Q But you don't have any specific information that there was anything defective with the winches, do you?

A Well, I'm like down in this room and it be up there, I couldn't see what was going on.

Q You don't have any specific information though, do you?

A No.

Q Whether the winches were operating properly or improperly?

A I couldn't tell that not being down in the barge.

Q Were there any interruptions in the use of this breakout winch? I think you answered no, is that right?

A No, we didn't have any trouble.

Q And you didn't have any trouble that afternoon after your accident either as far as you know?

A No, as far as I know they didn't. It only takes one time.

Q Now, as I understand your description of the accident, the reason you say that you fell was because this hook came down suddenly, is that right?

A Yes.

Q Did your feet slip out from under you?

A Well, no, I didn't slip right now, well, that thing come — all I could do was reach to grab it and the weight of it just swung me around and set me down in the pile of 4 x 4's laying down on the floor .

Q What did you do, reach forward to grab it or how did you reach when you reached?

A Straight down, I was standing on the edge of the barge like this and the hook was coming here, when I seen it come past I tried to grab it to get out of the way of that hook because they got a chain that big around and about that much and about a thirty or forty pound hook with the wires still on. The first thing I thought about when it was coming down fast was my head.

Q You were demonstrating with your feet set apart?

A Balancing yourself.

Q Weren't your feet apart?

A Yes, all the time, every time I reach for that.

Q Were your hands extending overhead and somewhat to the front, is that true?

A Yes.

Q What was the first thing coming down, hanging down, what were you reaching for, in other words, from this breakout winch, would that have been a hook?

A Well, they got wires, they had two wires on there double which would hand down I guess about from

the top of this part here to the floor and they hooked on the hook, so when it come down that hook got to come about this height, you got to grab them and take them off.

Q Were those wire slings?

A Two wires, they would be what they call a running wire, breakout wire they call them.

Q Those wires, they belong to T. Smith?

A Yes, that's Smith's equipment, Smith's wires.

Q These wires were hooked onto the cargo hook?

A Yes.

Q Which in turn hooked to the runner going to the winch?

A The cargo hook is hooked onto the winch. Now, these wires that hang down, you could leave them double like this and just pass them underneath the steel, you see, and Chester Weatheroy hold them way up, that would bring that other end high enough to put a round turn on the wire and one on this end, then we let him back it down to the floor again and leave it there and when the two wires come out to number two I'd be on this side, my partner on that side, the same way on the other end, we each grab a wire and shove it on the hook and we get out the way and pick it up and it can go in the hatch on a little slant.

Q What I was trying to find out on the breakout winch,

you have the wire runner coming down from the head of the boom and attached to the wire runner is what, the cargo hook?

A It's a piece of chain and then they got a flat piece of iron and the shackle goes in that and the hook on the bottom of the chain, it's rigged where it can just go up and down like an elevator.

Q Whose cargo hook and chain were those?

A Ship's gear.

Q And from this cargo hook hung down the wires that you talk about?

A That's right.

Q How far down from the hook would you say they would hang down?

A I'd say about five feet, they double up but they are still about five feet.

Q Now, then you were demonstrating a few minutes ago reaching up were you reaching up trying to grab the cargo hook or the wires?

A Well, in other words when you stand here and it goes down it would be about this far from my face when it comes down, so I watch the hook and the wires come down and when he — he was watching me too, when it reached about this height where I can get it in this hand and to take the wires off and he stop it.

Q When you were demonstrating a moment or two ago about reaching up what were you reaching for?

A Oh, when he stopped up there, you see, he said wait a minute, because he never did stop all morning, you see, when I be there ready for him that hook would come down like that and would just stop where I wanted it.

Q Were you reaching for the hook or for the wires?

A Reaching for the hook. The hook always come down, the wire is first and then the hook.

Q The wires were hanging in front of you —

A Right.

Q — when you were reaching up like that?

A No, the whole thing stopped, the wires and all was up there, four feet from me to reach any kind of wire, he just stopped in the air, so then it made me think a little while and he said "Wait a minute, I'm going to send it down," and I'm reaching to grab like I was doing all morning but it come down like a ton of bricks.

Q What would you normally grab when it would come down, the wire or the hook?

A When it come down slow I just put one hand on the wire and when it get to the hook, you know where to stop it.

Q You described this being about four feet above your finger tips.

A Above my head when he stopped the wires and everything.

Q That was the wire?

A Yes, that was the end of the wire, the bottom of the wire, the hook would be almost to the ceiling with the wires double and hanging down, that was still four feet above my head.

Q So the bottom of the wire being four feet above your head, the hook would have been another five feet above that?

A Oh, yes.

Q When it came down suddenly as you described did the cargo hook itself actually come down and touch you or did the wires touch you?

A No, it went over my back, the wires, when it come all of a sudden and I'm standing here and then the wires, it whipped and when I went to grab like to get those two falls, the hook was down across my shoulder, the chains and all went back of me.

Q So the hook actually touched you on the shoulder?

A No, the chain did, the hook missed me completely.

Q The *chain?*—

A Just the chain, in other words, it slid down and when he stopped when it was resting on my shoulder and the weight of the fall and everything just pulled me back down to the 2 x 4.

Q With the chain resting on your shoulder where would the hook have been?

A Back down here by my ass.

Q Even with your seat?

A Yes, that thing come down pretty fast, it just dragged me off the top, the weight of it dragged me right over the top of there.

Q This was all in one sudden motion, is that right, this coming down?

A That's all at one time.

Q No interruptions?

A No stopping, just like you took a brick and held it up on the window and dropped it right on down.

Q Well, correct me if I'm wrong but from what you describe that hook itself, just referring specifically to the cargo hook —

A Yes.

Q — if it had been about nine feet above your head as I think you said, four feet, the wire, and then another five feet, the hook would have come down over ten feet, wouldn't it?

A Not quite, I don't believe it was quite that high.

Q It came down even with your back, let's say if the hook would have come down to be even with your

back it would have come down some ten foot or more?

A It come down pretty good, it was a good eight feet up there from the top of the hook where I was standing.

Q You remember what was the next thing that was done with that breakout fall, did they pick it up or just stop it there or what?

A They stopped it right there. It was all across my shoulder and I was in the 4 bys, I guess he was scared it would jerk me clean up in the air, I imagine.

Q After you got up what was done, it was picked up again?

A Yes, and in a little while they picked it up again.

Q And lowered it back down to continue work?

A Well, I wouldn't know how many minutes or exactly how long it was but went back to work because I think they took one or two loads while I was standing on the side, I had pulled my drawers down to see if I was hurt.

Q How do you feel at the present time?

A I still hurt.

Q Whereabouts?

A In the same spot.

Q In the hip?

A Same spot in the scar where he operated.

Q Is that the left hip?

A Left hip. It sets stiff and everything else.

Q Do you do any work around the house?

A Light work.

Q Physical work of any kind?

A Light work around the house, cut the grass, sometimes the kids help me. I'm trying to get exercise. I rode a bicycle, stuff like that.

Q Had you seen any doctor since you saw a doctor about December 23rd?

A Yes.

Q Who was that?

A Dr. Llewellyn and I seen Dr. Brown and I seen Dr. Nix.

Q When is the last time you have seen a doctor?

A Two weeks ago.

Q And who was that?

A Dr. Nix.

Q Had you received any treatment from these doctors

or just examinations, have they given you any kind of treatment?

A X-rays, give me X-rays and stuff like that.

Q Any kind of physical therapy, any medicines or anything like that?

A No.

MR. YAGER:

That's all I have.

BY MR. THORNE:

Q Mr. Usner, I represent T. Smith & Son. This gang that you worked in was something of a specialty gang, was it not, you all did a certain type of work?

A We worked everything come in the river.

Q You worked cargo where you have a winch runner and flag man?

A We had regular ones but they was at number two hatch, they were talking that steel in there.

Q How many were in Krummel's gang on this particular ship?

A I think he had twenty or twenty-one, he had that regular extra man.

Q How many of the gang were working the barge as opposed to the ship itself?

A In the barge itself?

Q Yes.

A Four of us.

Q And in addition to that you had a man acting as derrickman and a man acting as a winch runner for this breakout boom?

A That's right, because they use the lift machines in the hold and need that many men down there, you see. They had the two forklifts like I tell you and they just went on the side and put the wood and whatever they had to do in the hold for these lifts to set it down on and help them get out when they get stalled or something like that.

Q Give me a rough estimate how many times you did this type of work actually getting down in the barge, from the barge to the ship to load it.

A Oh, I'd say for eighteen years off and on, whenever he had work, derrick work.

Q Literally hundreds of times you did this type of work?

A Oh, yes, hundreds of times, me especially.

Q Was it also customary practice to use the breakout boom doing this type of work?

A Well, like I say if they didn't have five gangs on the ship he could do it, if they had another gang,

if they had put cargo in number two they wouldn't have been able to do it.

Q But if you had an open hatch and free boom you would use a breakout because it facilitates the work?

A Yes, that's right, it speeds it up.

Q You all hadn't used the breakout when you first started, is that right?

A I believe we made a few loads without the breakout hook and it was too slow. In other words, when they come out and was hanging and had to wait for us to get them wires underneath, then we had to take those wires of and break it up and get it out the way but this way we had a load at all times by using the breakout hook.

Q About what time did you start using the breakout hook?

A I think between 9:30 and 10:00 o'clock. He said it was too damn slow.

Q You had been working with the breakout hook from that time until the time being except for the hour you knocked off for lunch?

A Maybe once or twice I didn't get — if I was busy maybe one of the other fellows take the breakout hook and —

Q By and large during that time you and your partner had been working the breakout hook?

A Yes, while he hold the wires in his hand.

Q And as I appreciate it you would get the breakout hook and secure it to the forward end of the bundle and then they lift it up?

A Yes, tell everybody to get out the way.

Q And the other man would hook it back off on the aft end?

A On the opposite end.

Q Who was working with you on the forward end?

A Isidore Mills.

Q Did you all have some sort of arrangement where you all were alternating catching the hook as it comes down for a load or you did it all the time?

A No, I said I done three-quarters of it.

Q About one quarter of the time he would catch it?

A He would catch it, yes, he caught a few loads like that.

Q Give me just a rough estimate of say how many loads you had handled with the breakout hook before this accident happened?

A It's a rough guess.

Q Yes, just a rough guess.

A Could have been twenty-five loads.

Q And on these prior occasions in each instance you would just stand roughly in the same position that you were standing before and the hook would be lowered down to about chest high?

A That's right.

Q And it would be lowered down about maybe a foot and a half from you, is that the way they had been lowering it within your reach?

A Closer than that, a little closer than that but he always comes down steadily because you had to stand up there and watch the ship because I had to get out the way because the barge is going to rock because we only have one or two, it didn't rock too bad when we started but the rest of the day we didn't have any trouble.

Q Would it be fair to say that at least prior to this accident you had some confidence in your derrick-man and in your winch runners that you would let that thing come down that close, that hook? Prior to that accident you must have had some confidence in their ability to get it down there?

A No, I don't trust nobody, not on that type of work. You got to be on your toes all the time .I don't care if you got a man twenty-five years running a winch, I been out there long enough to know it just takes one time for you to get hurt and if you're not, I mean, anything could happen, the brakes could slip, he could come out fast and swing the wires right off the hook and drop them down which has been done many times.

Q Perhaps you don't understand my question. My question to you is prior to your accident, the fact that you were standing within about a foot of where they were lowering the hook indicates to me that you had some confidence in their ability to lower that hook properly, is that a fact?

A In other words, I'd watch that hook, when that hook got ready to come out, I'll be standing four or five feet away from it up against the side of the barge, when I see it swing out then I'd walk over in and get in my position for him to come down and he had to watch me and stop that thing where I could take it off.

Q But once he started to come down you would come in, get in position where he was coming down about a foot from you?

A Once that hook comes straight out.

Q It comes right straight down?

A Yes, and I be right there.

Q And you didn't have to be right there, did you?

A Yes.

Q Why?

A How was I going to get in? The foreman is hollering let's get it. You don't stand back, you get where the work is.

Q Is that what the foreman told you on this day, he told you that?

A He hollered once or twice let's go, let's get the hook.

Q Did he tell you to stand up almost directly under the hook?

A No, he don't tell you where to stand.

Q You decide where to stand?

A Yes, you have to stand where you can get the hook, you can't walk out there in slow motion and drag along, you have to be on your toes and you got to get that load up and get that stuff ready for them.

Q Now, after your accident how many loads did they handle, just roughly?

A They might have handled fifteen loads.

Q As I appreciate your previous testimony this was the only time they had any difficulty with the load?

A With stopping it up there, so high.

Q And as I appreciate it to the best of your knowledge the fact that this thing came down suddenly was due to a mistake on the part of either the derrickman or the winch operator, is that right?

A That's what I think.

Q Where was the derrickman standing when you last saw him? You testified you can't remember, you have to watch that hook.

A You had to glance up, I'd say I was standing here on

the end of the steel, he would be in the corner of that room but on top the ship.

Q He was on the weather deck?

A Yes, he's down there.

Q When you last saw him he was looking at you?

A Well, the only time I seen him when he told me, he said, "Wait a minute, I'm going to put it in your hands, so I glanced up but I didn't see what signal he give or what he done.

Q What sort of signal was he giving, verbal or just motioning with his hand?

A Either got to get up there like this, some derrickmen use this to get up, two fingers, some will do that, tighten up, some will back down, they vary, different operators. Some of them that's been like the regular operator and the winch runners they got their signals and they know just what they are, even stop in so many feet but I couldn't exactly say what signal he give.

Q But he was in a position to see where you were, you were right out there on the top of the cargo?

A Yes, he seen me and I could see him, there was nothing obstructing his view at all, we could see one another good.

Q And it was customary for you to stand, to catch this hook, you would stand on top of the cargo that was to be discharged?

A Oh, yes, that's right.

Q And it was also customary for you when they are tied like this with the dunnage to take the dunnage as you would uncover each tier, you had to get the dunnage out the way so you just tossed it back in the hold behind you?

A Wherever you got an empty place. If they have one on the side we could have dropped it down on the side.

Q On this particular barge the only place to drop it was in the —

A Was on the forward end.

Q Was the forward end?

A Yes.

Q And that was about eight feet from the edge of this cargo?

A Oh, yes.

Q And how high again was the cargo from the bottom of the barge, about waist high, chest high, how high was it?

A The cargo we was working?

Q Yes, you were standing on top of it. How high was that?

A A little higher than man height and then you had

the 4 bys, I guess they were two foot high but they were all crossed, those things, sixteen foot long, they're solid oak.

Q You don't stack them, you throw them?

A Yes, sir, you don't have to get down there and make a stack and make them neat because they have to go wherever the barge is going, they belong to the barge people so they'll tell you throw them all on end out the way.

Q Do you remember where Mills was standing when this particular load suddenly came down?

A I wouldn't know if Mills was—I think he was in the barge but he was in back of me. In other words, the ship was here, the barge was here and I was standing in the center and he must have been over in here against the side of the barge.

Q But within a few feet of you, would that be right?

A Yes, within a few feet.

Q And was he hit by this falling chain or anything?

A Oh, no, no.

Q And it was actually the weight of this chain and the slings and everything that carried you backward?

A Yes, just pulled me off the top, dragged me right over the top, I tried to grab and hold as much as I can, I thought maybe I can grab and try to

ride it after I seen it on top me but they're greasy, you see, I even drove a wire clean up in here about an inch and they give me a shot for that and cleaned it out and bandaged it.

Q That's your right forearm?

A My right forearm.

Q That was one of the wires?

A One of the wires, the burrs, you know the wires they got where they spliced the wire, it was sticking out about that long, that's how much I was grabbing to hold on and that doctor even seen it, so he cleaned it up and put me a bandage on it and give me a tetanus shot for it, that was the next day.

Q And when you were carried backward to this open space you landed on your back on top of this dunnage, is that right?

A All in between these 4 bys.

Q On your back?

A I was in other words like this, I was a little bit to this side like this winch down in there and had this leg here was up in the steel, you know, the bundles, and this leg was like that and there I was.

Q So your legs would have been about on the level with your face, in other words, you're just laying down in there with your legs sticking up?

A A little higher than my face, and I had all that chain and all on top of me there but that was over my back and like this over my shoulder, around my neck here.

Q How did they manage to get you out of this, were you able to get out yourself?

A I got up.

Q Did they have to take this stuff off you before you could get up?

A No, no, no, it was laying there, all you had to do was push it and it was swinging from up there and I got out and I pulled my pants down.

Q Now, this particular job that this acting winch runner was doing as a winch runner job, was that a relatively easy job?

A Yes.

Q You don't have to swing the boom or worry about anything, all you had to do was raise or lower it?

A When you're working the barge all he does is use his hands.

Q And his only function is to raise it up so that—

A And bring it down.

Q And bring it down?

A That's all. That wasn't to swing either way, down

in the hol
me, wher
down.

d all he had to do is hold that steel up from
I tell him to let it down he let it back

Q And this pa
this type

rticular winch runner, Antoine, had done
of work before?

A He run the

winch.

Q I mean thi
that before

type using the breakout, had he done

A He done th
while ju
jam like

t once in a while. He done it once in a
t like we worked that boat, we get in a
that, he use him.

Q I'm not qu

e clear as to whether —

A Maybe he
without
day, he
him on
regular

vouldn't, sometime he'd go eight months
doing it and then he might do it half a
might put somebody else and they keep
here one or two days but he was not a
winch runner.

Q What abo
worked

t this Weatheroy, had he on occasion
as a derrickman before?

A Not too m

ch.

Q But he ha

l?

A Well, not

rgo, just that type, you know.

Q Just this t

pe of thing —

A Yes.

Q — where you're loading from barge to ship?

A Yes, but very seldom.

Q Now, except for this puncture in your right forearm you did not hurt your wrist as I understand during this accident?

A No.

Q You had hurt it before?

A I hurt it before but my leg was hurt, my right leg. I complained with that left leg in the hold falling down in between dunnage and I went to Mr. Villarrubia and he said we'll send you to the doctor later but I never did get to the doctor.

Q You had had some trouble with your right leg before this accident?

A Oh, 1960-1961 I was running a forklift on the wharf and the watchman stepped out and the wharf was all wet and on the brake pedal, you know how you got a little tit comes up to keep your foot from slipping off, well, it was worn out completely so I stood upon the brake to keep from hitting them and by the time I got out the wharf I couldn't hold it, my foot slipped off and took a piece out of here right out of this little bone.

Q That's out of your ankle?

A Yes, and bring me to the office and put a little merthiolate on it. They knew about it, the next

day I went back there on the ship, I was driving a tractor and I got off and my knee kept getting stiffer and stiffer and I told Mr. Krummel, he said yes, you'd better go the doctor. They sent me to Owens Clinic and I think it was Dr. Day.

Q Let me ask you this: Was this injury still giving you trouble at the time of this accident or had it —

A Yes.

Q It was still bothering you?

A Before that accident and I went up and seen Mr. Villarrubia to go to the doctor.

Q I mean at the time you were hurt.

A Yes, it was wedged in there.

Q No, was it still bothering you before you got hurt, in other words, the day you went to work?

A I see what you mean, yes.

Q Was it bothering you at the time?

A It was bothering me, I went up there twice, he said the next time you get hurt I'll send you to a doctor.

Q Now, when you were last seen by Dr. Alldredge in December of 1964 he did not discharge you as fit for duty, is that your understanding?

A He wouldn't give me a discharge.

Q He would not?

A I asked him for one. I said, "Doctor I got to have one in order to go back to work." He said, "Well, yours is at the company, I wish you luck." I said, "Well, I still got to have a discharge," and I said, "My leg is just killing me now," I said, "I can hardly walk," I said, "I ain't ever got up over twelve pounds on the therapy," they drop it and you raise it up and it just drops.

Q When did you go to Smith feeling that you were able to work, about when?

A I went to try, I believe it was in April — no, it wasn't that long, it wasn't April, it was in — that's when I seen Mr. Thome and then when his mother died was in June.

Q When did you first go to Smith saying I'm ready to go to work, how about a job?

A That's what I think in June, I wouldn't be sure, I'll have to look it up.

Q From the time you last saw Dr. Alldredge which was in December of 1964 until about June of 1965 after this year you didn't go to Smith?

A I went after he told me I was discharged and it was up at T. Smith & Son, I went on the 23rd or the 24th.

Q Did you tell him that you were ready to work then?

A I seen Mr. Sidney Belsom was out there and he got in my car, was sitting in there and I told him.

Q Did you tell him you were ready to go to work?

A I told him, I said, "Sidney, my leg is killing me, I don't know how that doctor discharged me." He said, "You ain't nothing but a hypochrondriac." I said, "All right, Sidney, get out, I'm going home," and I laid around the bed in and out trying to exercise and everything else but I wasn't able to go to work.

Q Are you able to work as a longshoreman at the present time?

A I'm willing to try it and see if my leg is going to hold up. I know I'm not able to climb too much, I'm still getting pain all in the leg.

Q But you haven't tried for anybody except Smith up to now?

A I been waiting on Smith since Christmas. Now, I did work on the 15th, that was before the operation, on the 15th of June, 1964 for Smith.

Q For a couple of days?

A No, for a couple of hours. Of course we did'nt do much, had a derrickman swing a wire under the load and they let me hook on a little while but I couldn't do it and I went back to the Union Street doctors. That's when he X-rayed it and told me he couldn't read the X-rays, to stay on home in bed with the heat pad until he get me an appointment with Dr. Berkett and Dr. Berkett told me to take two weeks vacation.

Q Now, this is the first time you ever filed a law suit, isn't that right, never had to file a law suit before?

A No.

Q Now, have you talked to any of the members of your gang about how this accident happened since the accident?

A No, I never discussed it with them.

Q Do you know whether your attorney has talked to any of the members of the gang?

A I wouldn't know.

Q You haven't given any of their names or suggested he talk to so and so or whoever it may be in the gang?

A Well, my lawyer talked to the witnesses there, you know, Isidore Mills and people like that.

Q Now, this hip that was giving you trouble today, is it your hip that's giving you trouble today?

A Yes, right in the back, right.

Q Below the buttocks?

A Right below the buttocks.

Q What about your right leg, is that all right now?

A No, when I strain it I get knots in it, in other words, this leg here, when they send me to Owens Clinic, to Dr. Day, I went in the room when it

was my turn and pulled my pants up and told him what happened, I though he was going to look at my leg, he said put them on and get the pills, you're all right, so I took the pain pills. When I come back down the next day I couldn't hardly walk, Bill sent me off the ship.

Q Just a minute, when was this, your first accident?

A Either 1960 or 1961 when I told you they took the pins out and when I went back to Dr. Day, I believe the only one there that day, I said I can't hardly walk, my knee was getting stiff, he said there ain't nothing wrong with you, you want some pain pills or you want me to discharge you. I said discharge me. Then I thought he was a little crazy so I went to go to Dr. Peterson, family doctor and he was on vacation and getting in the afternoon, so when I stopped was the first visit I ever made to Dr. Nix, I seen his office, and I went in there and he put me on the table when he run his fingers up this vein, they got three places in there, he said how long is this, I said this is almost two weeks. Well, he says, I'm going to get you some little pills and wrap that up and want you to put some pillows under your foot and go to bed for a couple of weeks until it gets better and I went back to work.

Q If it's agreeable with your counsel, is it all right if we see the reports that these examining doctors have made, Dr. Nix, Dr. Brown and Dr. Llewellyn, if it's all right with your counsel is it all right with you?

A Yes.

MR. THORNE:

That's all the questions that I have. Thank you.

MR. BAUS:

I just have one.

BY M. BAUS:

Q For my own clarification, these two lines that you were going to disengage from this hook, this is the breakout hook?

A Yes.

Q Now, you would go through this operation, you would attach them around a bundle of steel then raise the steel up with the hook attached to the steel?

A Yes.

Q All right, now, how would you get the hooks off the steel?

A When they back it down again, in other words, you follow me here, you got two wires on there, double wires, when he brings it down we've passed, you see, one of the 4 bys, we get behind it, we double that around, put the hook on there and hold it up and take the big heavy wires, when that goes in the hold we double this, so he backs that down and slides them out and lift them out of the way, when the two hooks come out we at that time take the empty wires and put them hooks

on there and when they're clear over in the ship in the hold we walk out and take the same thing that way, you got a load sitting there, we're waiting on them to come out. In the morning we was fighting that thing like that, you see, and them hooks just hanging there and no load going in the ship sometime for twenty minutes and that speeded the works up.

Q In other words, I think this question will solve it. Why didn't you leave when you unhooked the breakout hook after the main lines were attached to lift it up why didn't you leave the lines unhooked?

A Unhooked?

Q Why didn't you leave the breakout lines unhooked so you wouldn't have to lower it again and unhook them?

A You can't leave that wire play all around where you're walking or they get hooks in the bundles going up, we didn't have no place to put them, carry them up and down the barge. You let them people put them back on the breakout hook and raise it out so you don't catch it in the load. You got forty or fifty feet and the end sticking up, it's liable to hook in there when it goes up and liable to be some more.

MR. BAUS:

That's all.

BY MR. YELVERTON:

Q Have you in the past years in your work, have you operated a derrick, have you operated a winch?

A No.

Q You don't know anything about the mechanism or anything?

A No.

MR. YELVERTON:

That's all the questions I have.

STATE OF LOUISIANA

PARISH OF ORLEANS

I, Leonard J. Bossier, Jr., a Notary Public duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, authorized by the laws of said State to administer oaths and to take the depositions of witnesses, hereby certify that the foregoing deposition of JOSEPH C. USNER, was taken before me at the time and place hereinabove stated; that said witness was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in answer to the questions propounded to him; his deposition being reported by me in shorthand (Stenograph) and thereafter transcribed on the typewriter under my supervision; that the foregoing seventy-five pages contain a true and correct transcript of the deposition of said witness as thus given.

I further certify that I am not of counsel or related

to any of the parties to this cause, or in the employ of any of them, and that I am in no wise interested in the result of said cause.

WITNESS my hand and official seal at New Orleans, Louisiana, this 26th day of August, 1965.

(s) Leonard J. Bossier, Jr.
Notary Public

MOTION TO ENROLL ADDITIONAL COUNSEL

(Number and Title Omitted) (Filed: July 28, 1967)

Now into court comes H. Alva Brumfield, attorney for the petitioner in the above entitled and numbered action and suggests to the court that he wishes to enroll Evangeline M. Vavrick as additional counsel in the above matter.

Respectfully submitted by,

(s) H. ALVA BRUMFIELD
328 Chartres Street
New Orleans, Louisiana 70130
522-2574

ORDER

Considering the above and foregoing motion, it is ordered that Evangeline M. Vavrick be enrolled as additional counsel for petitioner in the above entitled and numbered action.

New Orleans, Louisiana this 31st day of July, 1967.

(s) LANSING L. MITCHELL
JUDGE

MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted) (Filed: July 31, 1967)

Now comes Union Barge Lines Corporation, defendant, and upon suggesting to the Court that on the basis of the affidavits and documents attached hereto and made a part hereof there are no genuine issues as to any material facts which would render defendant liable herein;

Wherefore, defendant, Union Barge Lines Corporation, moves for summary judgment in its favor, dismissing the complaint as against it, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

ADAMS AND REESE

BY: /s/ GEORGE V. BAUS
Attorneys for Union Barge Lines Corporation
847 NBC Building
New Orleans, Louisiana
529-4655

MOTION TO AMEND COMPLAINT

(Number and Title Omitted) (Filed: August 8, 1967)

Now comes Joseph Charles Usner, Plaintiff, and upon suggesting to the Court that on the basis of the affidavits and documents attached to the motion for summary judg-

ment by Union Barge Lines Corporation that Plaintiff wishes and is entitled to amend the original complaint filed herein to substitute the name of Ohio Barge Lines in the place and stead of Union Barge Lines Corporation.

By: /s/ Evangeline M. Vavrick

LAW OFFICES OF H.
ALVA BRUMFIELD
328 Chartres Street
New Orleans, Louisiana
70130
522-2574

MINUTE ENTRY August 9, 1967 Mitchell, J.

HEARING ON VARIOUS MOTIONS, ORDER GRANTING MOTION OF UNION BARGE LINE FOR SUMMARY JUDGMENT; AMENDING COMPLAINT; SUBMITTED AS TO MOTION OF LUCKENBACH FOR SUMMARY JUDGMENT

This cause came on this day for hearing on motion of defendants Luckenbach Overseas Corp. and Isthmian Lines, Inc., for summary judgment under Rule 56 F.R.C.P.; and motion of defendant, Union Barge Lines

Corp., for summary judgment; and motion of plaintiff to amend complaint.

PRESENT: Evangeline Vavrick
Attorney for Plaintiff
James Blazek, Esq.
Attorney for Union Barge Line Corp.

M. D. Yager, Esq.
Attorney for State Marine Lines, Inc. and Luckenbach Overseas Corp.

Argument.

On motion of defendant, Luckenbach Overseas Corp. and Isthmian Lines, Inc., for summary judgment under Rule 56 F.R.C.P.; same is SUBMITTED.

There being no objection:

IT IS ORDERED BY THE COURT that motion of defendant, Union Barge Lines Corp., for summary judgment, be, and the same is hereby ,GRANTED.

IT IS FURTHER ORDERED BY THE COURT that motion of plaintiff, Joseph Charles Usner, to amend complaint, be, and the same is hereby, GRANTED.

Jack E. Yelverton, Esq.
H. Alva Brumfield, Esq.
George B. Matthews, Esq.
George V. Baus, Esq.

AMENDED COMPLAINT

(Number and Title Omitted) (Filed: August 8, 1967)
TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

Now comes Plaintiff and moves the Court for an order permitting him to amend his complaint filed herein in the following particulars to wit:

I.

That wherever the name of Union Barge Lines Corp. appears, the name of Ohio Barge Lines should be substituted therefor.

II.

That the aforementioned corporation is a foreign corporation doing business in the State of Louisiana.

WHEREFORE, complainant prays that a copy of the original complaint and this amended complaint be served on Ohio Barge Lines and further prays for judgment as originally prayed for herein.

And for all general and equitable relief.

By: /s/ Evangeline M. Vavrick
LAW OFFICES OF H. ALVA BRUMFIELD
328 Chartres Street
New Orleans, Louisiana 70130
522-2574

Please serve:
Thru Secretary of State—
Ohio Barge Lines
P. O. Box 126
Dravosburg, Pennsylvania 15034

MINUTE ENTRY August 11, 1967 MITCHELL, J.

ORDER DENYING MOTIONS OF LUCKENBACH AND ISTHMIAN LINES FOR SUMMARY JUDGMENT

This cause came on for hearing on another day on motion of the defendant, Luckenbach Overseas Corporation, erroneously designated Luckenbach Steamship Co., Inc., and Isthmian Lines, Inc. for a summary judgment in their favor, dismissing the complaint against them.

Present:
Evangeline M. Vavrick
Attorney for plaintiff
M. D. Yager, Esq.
Attorney for defendants

IT IS ORDERED that the motion of the defendants, Luckenbach Overseas Corporation and Isthmian Lines, Inc., is denied.

MOTION FOR REHEARING OR, IN THE ALTERNATIVE, TO AMEND ORDER

(Number and Title Omitted) (Filed: August 28, 1967)

Now come Luckenbach Overseas Corporation and Isthmian Lines, Inc., defendants, and move this Honorable Court for the rehearing of the motion for summary

judgment, filed herein on behalf of the defendants, which was denied by order of this Court entered on August 17, 1967, and state as grounds therefor that there are no genuine issues as to any material facts which will render defendants liable herein and that the order of the Court was contrary to the law applicable to the undisputed material facts herein;

In the alternative, Luckenbach Overseas Corporation and Isthmian Lines, Inc., defendants, move this Honorable Court to amend the aforesaid order denying the motion for summary judgment to permit an interlocutory appeal pursuant to Title 28 of the United States Code, Section 1292(b);

Wherefore, defendants move for rehearing of the motion for summary judgment and for dismissal of the complaint as against them or, in the alternative, defendants move to amend the order denying the motion for summary judgment to permit the taking of an interlocutory appeal.

TERRIBERRY, RAULT, CARROLL,
YANCEY & FARRELL

By: /s/ M. D. Yager
Attorneys for Luckenbach
Overseas Corporation and
Isthmian Lines, Inc.
2141 International Trade Mart
Building
2 Canal Street
New Orleans, Louisiana 70130

MINUTE ENTRY August 30, 1967 MITCHELL, J.

ORDER GRANTING MOTION OF LUCKENBACH AND ISTHMIAN LINES FOR, AMENDED ORDER OF AUGUST 11 1967

This cause came on this day for hearing on motion of Luckenbach Overseas Corporation and Isthmian Lines, Inc., Defendants, for rehearing or, in the alternative, to amend order.

Present:
Evangeline M. Vavrick
Attorney for Plaintiff
George B. Matthews, Esq.
Attorney for Union Barge
Line Corp.

M. D. Yager, Esq.
Attorney for Luckenbach Overseas
Corp. & Isthmian Lines

IT IS ORDERED BY THE COURT that motion of Luckenbach Overseas Corporation and Isthmian Lines, Inc., Defendants, for rehearing or, in the alternative, to amend order, be, and the same is hereby, GRANTED, insofar as the order of August 11, 1967 be amended.

ORDER AMENDING ORDER OF AUGUST 11, 1967

(Number and Title Omitted) (Filed: August 30, 1967)

In view of the fact that the order rendered herein on August 11, 1967 denying the motion of Luckenbach Overseas Corporation and Isthmian Lines, Inc., for sum-

mary judgment involves a controlling question of law, to wit, the validity of the doctrine of operational negligence as a defense.

IT IS ORDERED that the order rendered herein on August 11, 1967 be amended to show that there exists a controlling question of law, to wit, the validity of the doctrine of operational negligence as a defense in this cause and as to which defense there is a substantial ground for difference of opinion and accordingly, an immediate appeal may materially advance the ultimate termination of the litigation.

New Orleans, Louisiana, August 30, 1967.

/s/ LANSING L. MITCHELL
UNITED STATES DISTRICT COURT

MOTIOIN TO ADD CO-COUNSEL

(Number and Title Omitted) (Filed: September 7, 1967)

Now comes Lemle & Kelleher, attorneys, and move that they be added as co-counsel of record for Luckenbach Overseas Corporation and Isthmian Lines, Inc., defendants herein, and in view of the subjoined consent of Terriberry, Rault, Carroll, Yancey & Farrell, counsel for Luckenbach Overseas Corporation and Isthmian Lines, Inc.

IT IS ORDERED that Lemle & Kelleher be and they are hereby added as co-counsel of record for Luckenbach Overseas Corporation and Isthmian Lines, Inc.

New Orleans, Louisiana, this 8th day of September, 1967.

/s/ LANSING L. MITCHELL
UNITED STATES DISTRICT COURT

SUBMITTED:

LEMLE & KELLEHER

BY: /s/ Thomas W. Thorne, Jr.
National Bank of Commerce Building
New Orleans, Louisiana 70112

CONSENTED TO:

TERRIBERRY, RAULT, CARROLL, YANCEY & FARRELL

BY. /s/ M. D. Yager
2141 International Trade Mart Building
2 Canal Street
New Orleans, Louisiana 70130

ORDER GRANTING INTERLOCUTORY APPEAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Misc. No. 856

LUCKENBACH OVERSEAS CORPORATION and ISTHMIAN LINES, INC.,

Petitioners,

versus

JOSEPH CHARLES USNER

Respondent.

On Application for Leave to Appeal from an Interlocutory Order

---

Before BROWN, Chief Judge, COLEMAN and SIMPSON Circuit Judges.

BY THE COURT:

Leave to Appeal from the interlocutory order of the United States District Court for the Eastern District of Louisiana, entered on August 11, 1967, in this cause be, and the same is hereby GRANTED.

(ORIGINAL FILED: October 12, 1967)

NOTICE OF APPEAL OF LUCKENBACH OVERSEAS CORPPORATION AND ISTHMIAN LINES, INC.

(Number and Title Omitted) (Filed: October 17, 1967)

TO. HON. A. DALLAM O'BRIEN, JR.
Clerk of Court
United States District Court
400 Royal Street
New Orleans, Louisiana
Evangeline M. Vavrick
328 Chartres Street
New Orleans, Louisiana 70130

Pursuant to the order of the United States Court of Appeals for the Fifth Circuit entered on October 12, 1967 granting leave to file an interlocutory appeal, Misc. No. 856, notice is hereby given that Luckenbach Overseas Corporation and Isthmian Lines, Inc. appeal to the United States Court of Appeals for the Fifth Circuit from the interlocutory order rendered herein on August 11, 1967 denying the motion of Luckenbach Overseas Corporation and Isthmian Lines, Inc. for summary judgment and from each and every portion thereof.

New Orleans, Louisiana, this 17th day of October, 1967.

TERRIBERRY, RAULT, CARROLL, YANCEY & FARRELL
and
LEMLE & KELLEHER
BY: /s/ Thomas W. Thorne, Jr.
Attorneys for Appellants

CLERK'S CERTIFICATE

I, A. DALLAM O'BRIEN, JR., Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify that the foregoing 66 pages contain and form a full, true and complete record in the below numbered and entitled cause:

C.A. 15531 Usner vs. Luckenbach SS Co., Inc., et al.

WITNESS MY HAND and the seal of said Court at the City of New Orleans, Louisiana, this 24th day of November, 1967.
A. Dallam O'Brien, Jr., Clerk
By: /s/ R. J. Walsh
Deputy Clerk

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 25344

LUCKENBACH OVERSEAS CORPORATION and ISTHMIAN LINES, INC.,

Appellants,

versus

JOSEPH CHARLES USNER,

Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(July 3, 1969)

Before AINSWORTH and SIMPSON, Circuit Judges, and SINGLETON, District Judge.

SIMPSON, Circuit Judge: This is an interlocutory appeal from an order denying appellants' motion for summary judgment on a claim based on negligence and unseaworthiness by a longshoreman against appellants as owner and charterer of the S/S EDGAR F. LUCKENBACH. The denial of the motion turned upon a controlling question of law as to which there was substantial ground for difference of opinion, i.e., the validity of the doctrine of operational negligence

as a defense to an unseaworthiness action. The district judge certified the question as one appropriate for interlocutory appeal under Title 28, U.S.C., § 1292(b). Upon the district court's certification, this Court allowed the interlocutory appeal.

The sole issue is whether a ship is rendered unseaworthy as a result of the instantaneous negligence of stevedores, this negligence resulting in the injury of another stevedore, when all the equipment and appurtenances aboard the ship are admittedly in a seaworthy condition.

The facts are undisputed. T. Smith & Son, Inc., an independent contract stevedore, was employed to load the appellants' ship with cargo of steel rods approximately 50 feet in length. Slings, secured to booms, were being used to carry bundles of rods from the pier onto the vessel. The slings were lowered into place by the booms, and were attached to the bundles of rods. On the day the plaintiff was injured, the loading operation had proceeded for some time, until on one occasion when the plaintiff was preparing to affix the sling to the rods, he noticed that the lowered sling was just out of his reach. The plaintiff motioned to the flagman to direct the winch operator to lower the slings further. The winch operator then proceeded to lower the slings, but he lowered them too far causing them to strike the plaintiff, knocking him down onto the barge, causing him injury. Neither before nor after the accident was any trouble experienced with the winch booms, slings, or any other equipment; nor is there any contention that the wiches were operated in a systematically negligent manner that would constitute unseaworthiness. The only way in which the ves-

sel could be said to be unseaworthy would be if this one instance of operational negligence on the part of the stevedore operating the winch could be said to constitute unseaworthiness.

The uncertainty and confusion in this area of the law has resulted from the Supreme Court's per curiam opinion in *Mascuilli v. United States*, 337 U.S. 237, decided on May 22, 1967. In its per curiam opinion, the Supreme Court granted certiorari and reversed the judgment of the Third Circuit, citing only two cases: *Crumady v. The Joachim Hendrik Fisser*, 358 U.S. 423 (1959), and *Mahnich v. Southern S.S. Co.*, 321 U.S. 96 (1944).

The district court had held in *Mascuilli*, among other things, that the stevedores had only been instantaneously negligent in handling seaworthy equipment; therefore, the vessel could not be said to be unseaworthy. *Mascuilli v. United States*, D.C.E.D.Pa. 1965, 241 F.Supp. 354, aff'd per curiam, 358 F.2d 133.

The question, then, is whether *Mascuilli* abolished the defense of operational negligence in an action for unseaworthiness. If so, the plaintiff-appellee in the instant case may recover, but if not, recovery is clearly barred since there is no other evidence which would support a finding of unseaworthiness.

Prior to *Mascuilli*, this Court had held in *Antoine* and *Robichaux*,[1] that operational negligence at the moment of injury did not render the vessel unseaworthy. *Mascuilli* raised serious doubt as to the continuing vitality of this holding. That doubt, at least for this Circuit, has been dispelled. "Instant unseaworthiness" resulting from

"operational negligence" of the stevedoring contractor is not a basis for recovery by an injured longshoreman. The question is so resolved by our recent decision in *Grigsby, etc. v. Coastal Marine Service of Texas, Inc., et al.*, 5 Cir. 1969, —— F.2d —— [No. 22451, May 1, 1969]. See Part VI, pages 35-45, slip opinion.[2]

The district court, upon remand, is directed to grant appellants' motion for summary judgment.

REVERSED AND REMANDED.

---

[1] *Antoine v. Lake Charles Stevedores, Inc.*, 5 Cir. 1967, 376 F.2d 443, cert. denied, 389 U.S. 869, 88 S.Ct. 145, 19 L.Ed.2d 146; *Robichaux v. Kerr McGee Oil Indus., Inc.*, 5 Cir. 1967, 376 F.2d 447.

[2] See also *Tim v. American President Lines*, 9 Cir. 1969, ——— F.2d ——— [No. 22,395, March 18, 1969].

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1967

No. 25344

D. C. Docket No. CA 15531 "F"

LUCKENBACH OVERSEAS CORPORATION AND ISTHMIAN LINES, INC.,

Appellants

versus

JOSEPH CHARLES USNER,

Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before AINSWORTH and SIMPSON, Circuit Judges and SINGLETON, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same

is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court with directions to grant appellants' motion for summary judgment.

It is further ordered that appellee pay to appellants, the costs on appeal to be taxed by the Clerk of this Court.

July 3, 1969

Issued as Mandate: